

Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Washington, D.C. 20554

**CGB**

OCT 16 2003

02-278

Control No. 0302813/aw

The Honorable Edward M. Kennedy  
United States Senator  
2400 JFK Federal Building  
Government Center  
Boston, MA 02203

RECEIVED

OCT 28 2003

Federal Communications Commission  
Office of the Secretary

Dear Senator Kennedy:

Thank you for your letter on behalf of your constituent, Mr. Peter Shields, President of SoundBite Communications, regarding the rules and regulations implementing the Telephone Consumer Protection Act of 1991 (TCPA). Mr. Shields expresses concern that the Federal Trade Commission (FTC) and the Federal Communications Commission (Commission or FCC) have conflicting rules issued in accordance with the Do-Not-Call Act.

In his correspondence, Mr. Shields is referring to amendments to the Commission's rules. The Do-Not-Call registry will not prevent calls from organizations with which there is an established business relationship. Under related rules, telemarketers must ensure that predictive dialers abandon no more than three percent of all calls placed and answered by a person. A call will be considered "abandoned" if it is not transferred to a live sales agent within two seconds of the recipient's greeting.

On September 8, 2003, we issued the Report on Regulatory Coordination (Report) to Congress containing an analysis of the telemarketing rules put into effect by both agencies and of few inconsistencies between the FTC's and FCC's rules. Enclosed is a copy of the Report in which there is discussion concerning the FCC's general proposal to remedy inconsistencies.

The FTC and FCC have responded to consumer complaints about telemarketing practices by establishing a national Do-Not-Call registry, which went into effect on October 1, 2003. Information regarding "telephone solicitations" may be accessed at <http://www.fcc.gov/cgb/donotcall>. Major telemarketing orders and notices are available at <http://www.fcc.gov/cgb/donotcall/#ordersandnotices>.

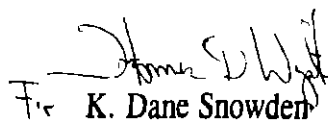
*[Handwritten signature]*

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the FTC and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules. The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive calls and faxes they believe they have neither solicited nor given their permission to receive.

Information on all telecommunications-related issues can be accessed via the Internet from the Commission's Home Page located at <http://www.fcc.gov> and the Consumer & Governmental Affairs Bureau's web site link at <http://www.fcc.gov/cgb> or by calling 1-888-CALL-FCC. TTY users may call 1-888-TELL-FCC. The Commission has available an e-mail service designed to apprise consumers about developments at the Commission, to disseminate consumer information materials prepared by the Commission to a wide audience and to invite comments from other parties on Commission regulatory proposals. This free service enables consumers to subscribe and receive FCC fact sheets, consumer brochures and alerts, and public notices, among other consumer information. To subscribe, an individual would send an e-mail to [subscribe@info.fcc.gov](mailto:subscribe@info.fcc.gov) and in either the subject line or body of the message put "subscribe fcc-consumer-info first name last name (substitute their first and last name, for example, "subscribe fcc-consumer-info John Doe")"

We appreciate Mr. Shields' comments. We have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

  
K. Dane Snowden  
Chief

Consumer & Governmental Affairs Bureau

Enclosures

United States Senate

WASHINGTON, DC 20510-2101

September 24, 2003

COP  
TCPA Policy  
2813

Federal Communications Commission  
Attn: Richard Harris  
445 12<sup>th</sup> Street, S W  
Room 8-C453  
Washington, D.C. 20554

RE Peter Shields

Dear Mr. Harris:

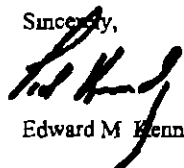
My assistance has been requested concerning the enclosed correspondence. Mr. Shields, the President of Sound Bite Communications, is deeply concerned by the conflict between the Federal Trade Commission and the Federal Communications Commission on the amendments to the Telephone Consumer Protection Act and the Telephone Sales Rule. This conflict puts his business in jeopardy and he would like to see a swift resolution.

I am respectfully referring this correspondence to you for your attention. Any appropriate assistance or consideration you will be able to render would be greatly appreciated.

For additional information or questions, please do not hesitate to contact me at (617) 565-3170. Thank you for your attention and consideration.

With best wishes,

Sincerely,



Edward M. Kennedy

2400 JFK Federal Building  
Government Center  
Boston, MA 02203  
EMK/maw-asd

25 SEP 2003 RCUH

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3 Burlington Woods Drive  
Burlington, MA 01803  
September 22, 2003

Senator Edward M. Kennedy  
2400 JFK Building  
Boston, MA 02203

Dear Senator Kennedy:

I am President of SoundBite Communications. Our business centers around sending high quality, respectful voice messages on behalf of our clients to their customers. Over one hundred and fifty leading companies like ATT Wireless, The Hartford and BankOne use our technology and services. We are a three-year-old company that has been growing to date but now our business is at serious and imminent risk.

The FCC and the FTC have recently amended rules implementing the Telephone Consumer Protection Act (TCPA) and the Telephone Sales Rule (TSR) that conflict. This conflict will severely harm our business. The conflict, specifically the FTC's requirement of having a live person answer a call within 2 seconds directly conflicts with the FCC's amendment to allow automated calls, if a prior business relationship exists between our client and the consumer. We have been working with the law firm, Mintz Levin, and it is our opinion that the FCC's amendment trumps the FTC's position. Unfortunately, that is not good enough for our clients. The conflict is causing an increasing number of our clients to delay their business with us until the FTC and the FCC resolve their conflict.

If you can help us get the FTC and the FCC to come out with a joint statement that would clearly resolve the conflict, it would be appreciated. Without such a statement, our business is in limbo and the fate of our employees is unknown. The two agencies are currently working on a Memorandum of Understanding to address the discrepancies between the TSR and TCPA, but I believe if you or your office were to convey our concerns and needs to them that it would add an appropriate and necessary sense of urgency and importance to the matter.

Thank you for your help in this matter.

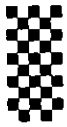
Sincerely yours,

A handwritten signature in dark ink, appearing to read "Peter Shields".

Peter Shields  
President  
SoundBite Communications

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SEP 24 2003 5 44PM

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**OFFICE OF UNITED STATES  
SENATOR EDWARD M. KENNEDY**

2400 John F. Kennedy Federal Building  
Government Center  
Boston, MA 02203

Phone: (617) 565-3170

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TO: FCC - Richard Harris

From:        Jahdia Caldwell        Julie Ryder  
       Brent Carney        Graham Shalgian  
       Tom Crohan        Barbara Souliotis  
       Travis Cummings           Melissa Wagoner  
       Amelia Dungan        Emily Winterson  
       Lauren Janes        Intern:       

Date: 9/24/03Pages to follow: 2Re: Peter Shields

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